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IN THE
SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1940

No. **206**

GUADALUPE R. GALLEGOS and FRANCESCA
GALLEGOS, his wife, and INGA G. GUDMUND-
SEN, in their own behalf and in behalf of
others similarly situated and HARRY
W. HILL, Receiver of Interna-
tional Building & Loan Associa-
tion, a corporation.

Petitioners.

vs.

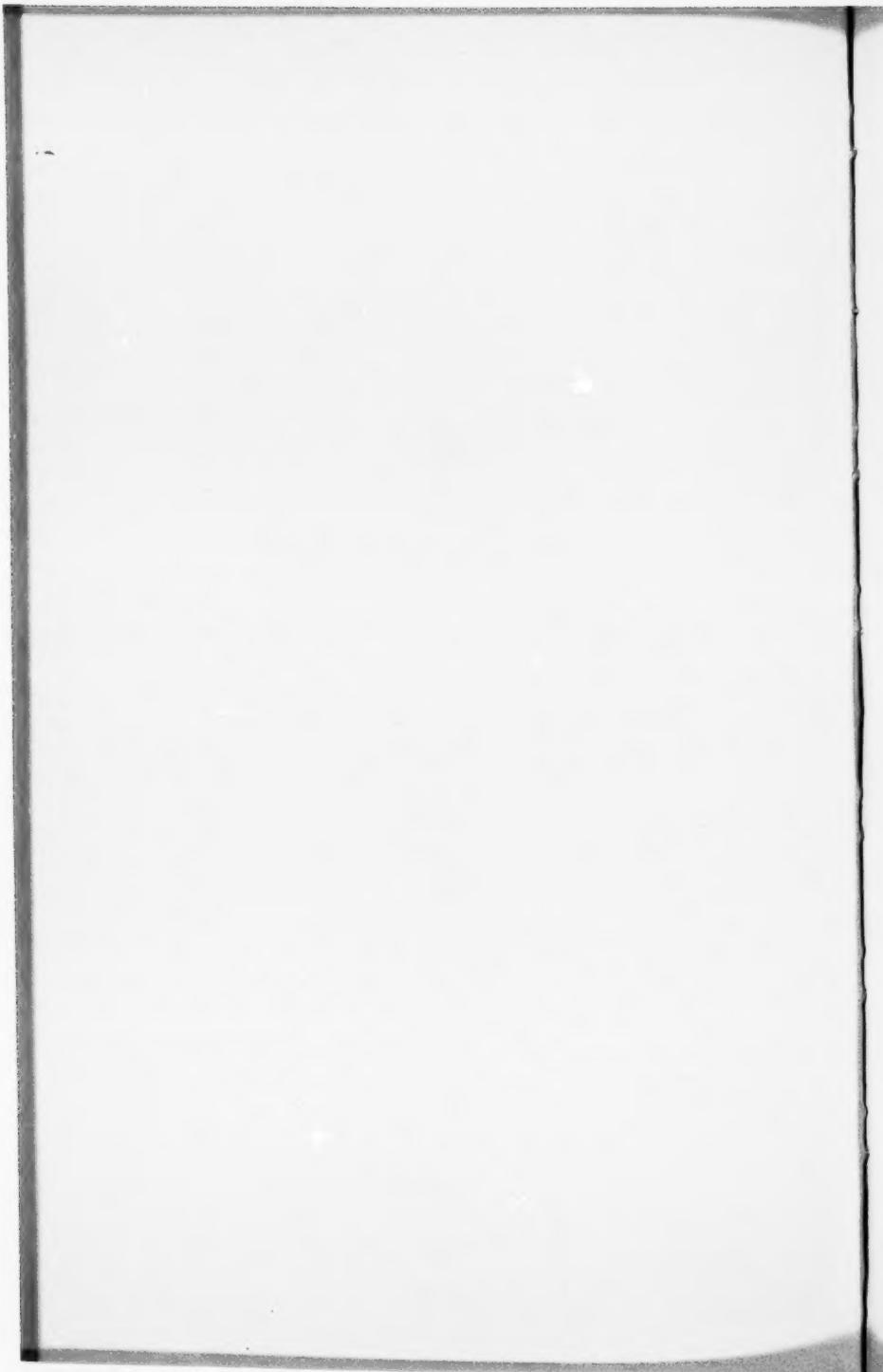
LLOYD R. SMITH, Corporation Commissioner
of the State of Oregon.

Respondent.

Upon Petition for a Writ of Certiorari to the United
States Circuit Court of Appeals for the
Ninth Circuit.

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SEN, in their own behalf and in behalf of
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W. HILL, Receiver of Intermoun-
tain Building & Loan Associa-
tion, a corporation,
Petitioners.

vs.

LLOYD R. SMITH, Corporation Commissioner
of the State of Oregon,
Respondent.

Upon Petition for a Writ of Certiorari to the United
States Circuit Court of Appeals for the
Ninth Circuit.

To the Honorable Chief Justice and Associate
Justices of the Supreme Court of the United
States:

Your petitioners, Guadalupe R. Gallegos and
Francesca Gallegos, his wife, and Inga G. Gudmund-
sen, in their own behalf and in behalf of others

similarly situated and Harry W. Hill, Receiver of Intermountain Building & Loan Association, a corporation, respectfully present this their petition for a writ of certiorari addressed to the United States Circuit Court of Appeals for the Ninth Circuit for the review and determination in this court of that certain cause in said Circuit Court of Appeals wherein your petitioners were appellants and Lloyd R. Smith, Corporation Commissioner of the State of Oregon, was appellee, in which cause said Circuit Court of Appeals affirmed a decree of the District Court of the United States for the District of Oregon, dismissing the bill of complaint and suit of petitioners in said District Court. The suit so dismissed sought a determination of the rights of petitioners and others similarly situated in the Oregon properties of a Utah Building and Loan Association and the appointment of receivers in aid of a primary receiver appointed by the United States District Court for the District of Arizona in accordance with a decree of such Arizona District Court providing for the liquidation of all of the assets of said corporation wherever located for the equal benefit of all certificate holders without preference to or discrimination against any certificate holders because of their residence.

OPINION OF THE COURT BELOW

The Circuit Court of Appeals opinion has not as yet appeared in the Federal Reporter Advance Sheets. Its date is May 9, 1940.

JURISDICTION

This court has jurisdiction to review the judgment and decree as rendered below under Section 240a of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938) and under Rule 38 of the Revised Rules of this Court, effective February 27, 1939. The date of the judgment and decree of the Circuit Court of Appeals sought to be reviewed is May 9, 1940. An order was made staying issuance of mandate to and including July 9, 1940.

STATUTES INVOLVED

The constitutional provisions and statutes involved are Article IV, Sections 1 and 2, Article I, Sections 8 and 10, Article VI, and the Fourteenth Amendment to the Constitution of the United States, as well as Oregon Laws 1931, Chapter 373, Section 63, Page 775 (Oregon Code Ann. 1935 Supp. Sec. 25-3,104) and Oregon Laws 1935, Chapter 176, Page 252 (Or. Code Ann. 1935 Supp. Sec. 25-3,101), Oregon Laws 1931, Ch. 373, Sec. 57 (Or. Code Ann. 1935 Supp. Sec. 25-398) and Or. Code Ann. 1930, Sec. 25-316.

SUMMARY STATEMENT OF MATTER INVOLVED

Most of the facts were stipulated. References herein to "stipulation page—" refer to pages of the printed record.

Intermountain Building & Loan Association, hereinafter called Intermountain, is an insolvent

Utah corporation. During its existence it sold in various states, including Utah, Arizona, California and Oregon (153) savings certificates by which it agreed, in consideration of the payment of fixed monthly installments for 126 months, to pay to the purchasers the matured value of such certificates. Each certificate also provided that the holder could borrow against it or cash it in at any time at the cash surrender rates stated in the instrument. (Complaint 10-14, 150-152).

For the most part these certificates contained a security clause reading as follows (Complaint 12, 150-152):

“Security. As security for the performance of the obligations of the Association hereunder, the Association will hold intact, subject to the constant examination and inspection of the banking department of the State of Utah, first mortgages on improved real estate in an amount equal to at least one hundred per cent of its liabilities hereunder, less the amount of any loans made on this and like certificates or any certificates issued in lieu thereof.”

Intermountain was licensed to do business in Oregon in 1924, at which time the only Oregon statute on the subject required foreign building and loan associations to keep on deposit with some responsible trust company or authorized officer of the state of their incorporation securities of the value of \$100,000.00 in trust for all its members and creditors. (Oregon Code Annotated 1930, Section 25-316.) In

compliance with this section Intermountain, at the time of its admission into Oregon, filed with the Oregon Corporation Commissioner a certificate of the State Treasurer of the State of Utah that it had deposited with that officer securities in an amount slightly in excess of \$100,000.00. (139-140).

Following its admission into Oregon Intermountain sold certificates to investors on which the latter paid to it \$220,966.96. (153). All of the certificates sold to Oregon investors contained the security clause heretofore quoted except nine certificates on which the aggregate amount paid by the investors was \$4,657.00. (100). All certificates sold to Oregon residents were sold prior to the 6th day of June, 1931 (effective date of a statute providing for a deposit with the Oregon Corporation Commission and a preference for Oregon investors) except seven certificates on which the total payments amounted to \$108.50. (142).

Effective June 6, 1931, Chapter 373 Oregon Laws 1931, Section 63, p. 775 (Oregon Code Ann. 1935 Supp. Sec. 25-3,104) requires foreign building and loan associations to deposit with the Oregon Corporation Commissioner \$100,000.00 in cash or securities with power given the Commissioner to require additional deposits. The same section also provides that the deposits shall be held as security until all claims of Oregon residents against the associations have been fully paid. (See appendix for text).

No such deposit was made by Intermountain until September, 1933. At that time the Corporation Commissioner, having information of a suit brought in Arizona (where approximately one-third of the business of Intermountain was done (153)) and also that the condition of Intermountain was "very, very bad" (243), peremptorily demanded a deposit of \$100,000.00 face value of mortgages, which was made. In October, 1933, on a further demand from him, an additional \$100,000.00 face value of mortgages was deposited with him. (141).

The suit in Arizona was brought in April, 1933, in the United States District Court by four holders of certificates containing the security clause. They alleged that Intermountain had been insolvent for more than seven years (Ex. 1, P. 20). They further alleged corporate mismanagement in the interest of a rival corporation (Ex. 1, P. 20), that the appointment of a receiver was necessary to preserve the assets of the corporation and they prayed for themselves and all others similarly situated for a decree that the assets of the corporation were a trust fund to be held for the benefit of all holders of certificates containing the security clause, and that they and others similarly situated be decreed to have a lien on all of the real estate mortgages of the corporation in accordance with the security clause. (Ex. 1, P. 28-33).

Eleven months after this suit was started the Bank Commissioner of Utah undertook to take pos-

session of the Arizona assets of the corporation and required the corporation to, and it did, make transfers thereof to him. He also sought to intervene in the suit but permission was denied him. In April, 1934, a receiver was appointed and the corporation and the Utah Bank Commissioner thereupon appealed to the Circuit Court of Appeals for the Ninth Circuit.

That court, in a decision found in 78 Fed. (2nd) 972, affirmed the appointment of the receiver, holding that the certificate holders were contract lien creditors, the District Court was empowered to appoint a receiver, and that the Utah Bank Commissioner had not acted with sufficient diligence in his tardy attempt to liquidate the corporation and the appointment of the receiver was therefore proper. Certiorari was denied by this court. 296 U. S. 639.

Final decree was entered in the Arizona case in January, 1937. This decree established a contract lien against all of the assets of the corporation as of the date of filing the suit (April 18, 1933) in favor of the holders of certificates containing the security clause (118-119), made the receivership permanent to liquidate the corporation, vested the receiver with title to all its assets wherever situated (119), ordered the corporation to make all transfers necessary to vest such title in the receiver (120), decreed all of the assets of the corporation a trust fund to secure its obligations to the named plaintiffs and other lien holding creditors similarly situated (121), appointed

the receiver as a trustee to execute the trust (121), and enjoined all persons from interfering with the possession of the receiver or his liquidation of the corporation. (122). No appeal was taken from this decree.

On March 19, 1934 (16 days before the application for a receiver in the Arizona suit) the Oregon Corporation Commissioner took possession of the assets of Intermountain in Oregon acting under the power given him by Oregon Laws 1931, Chapter 373, Section 57, Page 771 (Oregon Code Ann. 1935 Supp. Sec. 25-398) which confers power on him to take possession of building and loan associations and operate them (48). He did not then and up to the time of trial of this cause in 1937 had not started liquidation of the corporation or undertaken to comply with the provisions of the Oregon law relating to liquidation of such corporations. Oregon Code Ann. 1935 Supp. Sec. 25-3,101.

The present suit was instituted by two certificate holders who were among the plaintiffs in the Arizona suit and by the Arizona receiver against the then Corporation Commissioner of the State of Oregon. Respondent is the present Commissioner. The complaint alleges the existence of the corporation, its sale to the plaintiff certificate holders of certificates containing the security clause, its default in payment, its insolvency (18), asserted all of the corporation's assets were a trust fund for the equal benefit of all like certificate holders (21-22) and that

such certificate holders had a lien on such assets. (22). It alleged the proceedings in the Arizona case and asserted that thereby it had been judicially determined that these assets were a trust fund for the equal benefit of all contract lien holders (28) and prayed for a decree establishing such a lien, and for the appointment of ancillary receivers in aid of the Arizona receiver (39), and that the Corporation Commissioner be required to turn over to the ancillary receivers all of the corporation's assets in his hands. (40).

To this complaint the Corporation Commissioner answered generally denying knowledge of most of the allegations and alleging that he had taken possession of the corporation by virtue of the power conferred on him by Section 57 of Chapter 373, Oregon Laws 1931, previously referred to (48), admitted that Intermountain had been insolvent "for some time" (57), denied the necessity for an ancillary receivership (59) and alleged that he would ultimately distribute the assets of the corporation in his hands in accordance with the laws of Oregon (65), and prayed that he be authorized to continue operation, control and liquidation of Intermountain's assets in Oregon, first for the benefit solely of members and shareholders residing in Oregon, and then if any residue remained after the claims of Oregon shareholders, creditors and members had been satisfied in full to dispose of such residue as the Circuit

Court of the State of Oregon for Multnomah County might direct. (66).

The assets of Intermountain taken over by the Oregon Commissioner had cost Intermountain \$578,472.70. (183). These assets had been purchased in part from money contributed by certificate holders in other states whose certificates contained the security clause. (184-5).

The District Court held that the security clause did not create a specific lien on the Oregon assets of Intermountain, that the proceedings in the District Court of Arizona was not a class action which could bind the Oregon Corporation Commissioner or Oregon certificate holders, that the Oregon law requiring deposits and giving a preference to Oregon certificate holders is constitutional, and that the Oregon Corporation Commissioner having first acquired jurisdiction over the Oregon assets the court would not appoint a receiver. (114-5). In its findings of fact the court found that Intermountain was "probably insolvent" at the time the Corporation Commissioner took over its assets. (112).

Plaintiffs appealed to the Circuit Court of Appeals, in part assigning as error the action of the court in holding the Oregon deposit and preference statute constitutional, in failing to give full faith and credit to the Arizona decision respecting the existence of a lien on the assets in favor of the holders of certificates containing the security clause, in hold-

ing that the Arizona suit was not a class action binding on the Oregon Commissioner or certificate holders, and in finding that the Oregon procedure for liquidation was adequate to protect all creditors. (265-272).

The Circuit Court of Appeals declined to pass upon the validity of the Oregon statute under which the two deposits of securities were made with the Oregon Commissioner and which creates a preference in favor of Oregon creditors, or on the effect of the fact that the statute was enacted after the Intermountain had been admitted to do business in Oregon and after substantially all its indebtedness to Oregon creditors had been created. It likewise declined to pass on the question of insolvency at the time the deposits were exacted, saying that all such matters could be presented to the Oregon courts in the process of liquidation by the Commissioner. Instead, it considered only one question, that of the adequacy of the liquidation proceedings provided by Section 60, Chapter 373, Oregon Laws 1931. (300-1). The court did, however, refer to *Brashear v. Intermountain*, 109 Fed. (2nd) 857, wherein the court held in respect to the California Building and Loan Commissioner liquidation of the same corporation that the Building and Loan Commissioner and the State Treasurer with whom the California securities were deposited were not similarly situated with the plaintiff certificate holders and so, whether the Arizona case was a class suit or not, the decision

there did not conclude the Commissioner and Treasurer and that all questions relating to claims, preferences, constitutionality of statutes and similar matters should be determined in the California liquidation proceedings.

In the Brashear case application is pending in this court for a writ of certiorari. Many of the questions involved in the present case are likewise present in the Brashear case. However, there are many important dissimilarities, fundamental in character, in the matter of the liquidation statutes, the diligence exercised by the Oregon Commissioner, and the relative dates of the Oregon preference statute and the creation of the obligations of the corporation to Oregon residents.

SPECIFICATIONS OF ERRORS

- (1). The Circuit Court of Appeals erred in holding that Gallegos v. Intermountain Building & Loan Association (the Arizona case) together with the Findings of Fact and Conclusions of Law therein were not res adjudicata, binding on Oregon creditors and the Oregon Corporation Commissioner and entitled to full faith and credit in the Oregon courts under the provisions of Article I, Section 8, Article VI and Article IV, Section 1, of the United States Constitution.
- (2). The Circuit Court of Appeals erred in deciding that it was unnecessary to determine the

rights of petitioners and others similarly situated and refusing to pass thereon.

(3). The Circuit Court of Appeals erred in holding that the Oregon procedure for liquidation and the action or lack of action of the Corporation Commissioner thereunder are adequate to protect the rights of nonresident creditors.

REASONS RELIED ON FOR GRANTING THE WRIT

POINT A:

In holding that the final decree, findings of fact and conclusions of law made by the United States District Court for the District of Arizona in Gallegos v. Intermountain Building & Loan Association were not res adjudicata and binding on Oregon creditors and the Oregon Corporation Commissioner and entitled to full faith and credit in Oregon, the Circuit Court of Appeals has decided an important question of Federal law in a way probably not in accord with applicable decisions of this Court.

POINT B:

In determining that petitioners were not entitled to a decision on their rights respecting the Oregon assets, the Circuit Court of Appeals has decided an important question of Federal law which appears not to have been and should be settled by this court.

POINT C:

In holding that it was unnecessary to determine whether the Oregon statute giving a preference to Oregon residents violates Article IV, Section 2, Article I, Section 10, and Article I, Section 8 of the Constitution and Section 1 of the Fourteenth Amendment thereto, the Circuit Court of Appeals has decided an important question of Federal law probably in conflict with applicable decisions of this court.

POINT D:

In deciding that the procedure provided by the Oregon statutes for liquidating building and loan associations and the action or lack of action thereunder are adequate to protect nonresident creditors, the Circuit Court of Appeals has decided an important question of Federal law in a way probably in conflict with applicable decisions of this court.

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